

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

INTELLECTUAL VENTURES II LLC,	§	
	§	
Plaintiff,	§	
	§	Case No. 2:17-CV-00662-JRG-RSP
v.	§	LEAD CASE
	§	
SPRINT SPECTRUM, L.P. ET AL,	§	
_____	§	
	§	
T-MOBILE USA, INC. ET AL,	§	Case No. 2:17-CV-00661-JRG-RSP
	§	
Defendants.	§	
	§	
_____	§	

ORDER

Before the Court is Magistrate Judge Payne’s Report and Recommendation regarding Defendants’ Sealed Motion for Summary Judgment of No Pre-Suit Damages, which has not been objected to. (Dkt. No. 456.) Also before the Court are (1) Objections to the Court’s Order on the Motion to Preclude Expert Testimony on Certain Evidence in Support of Defendants’ Written Description Defense (Dkt. No. 480); (2) Objections to the Magistrate Judge’s Report and Recommendation on Defendants’ Motion for Summary Judgment that the Asserted Claims of U.S. Patent Nos. 9,320,018 and 9,681,466 are Patent Ineligible (Dkt. No. 498); and (3) Objections to the Report and Recommendation Denying in Part Defendant’s Motion for Partial Summary Judgment that Certain Disputed References are Prior Art (Dkt. No. 501). The Court will address each of these below.

1. Report and Recommendation regarding Defendants' Motion for Summary Judgment of No Pre-Suit Damages

Defendants previously filed a Motion for Summary Judgment of No Pre-Suit Damages. (Dkt. No. 297.) On April 18, 2019, Magistrate Judge Payne entered a Report and Recommendation, which found that the Motion should be granted-in-part. (Dkt. No. 456.) The Report concluded that Defendants' Motion should be granted as to pre-suit damages for U.S. Patent Nos. 8,897,828; 8,953,641; 9,532,330; and 9,681,466, but the Report recommended that Defendants' Motion be denied as to pre-suit damages for U.S. Patent Nos. 8,682,357 and 9,320,018. No objections have been filed to this Report and Recommendation by any party.

Because no objections have been filed and because the undersigned agrees with the reasons set forth in the Court's Report and Recommendation, the Recommendation is **ADOPTED**. It is therefore **ORDERED** that Defendants' Motion is **GRANTED-IN-PART**. The Motion is **GRANTED** as to pre-suit damages for U.S. Patent Nos. 8,897,828; 8,953,641; 9,532,330; and 9,681,466, but the Motion is **DENIED** as to pre-suit damages for U.S. Patent Nos. 8,682,357 and 9,320,018.

2. Objections to Magistrate Judge Payne's Order on the Motion to Preclude Expert Testimony on Certain Evidence in Support of Defendants' Written Description Defense

Plaintiff previously filed a Motion to Preclude Expert Testimony on Certain Evidence in Support of Defendants' Written Description Defense. (Dkt. No. 300.) Magistrate Judge Payne issued an Order (Dkt. No. 446) partially granting that Motion to

Preclude. Now before the Court are Defendants' Rule 72 Objections to the Court's Order on the Motion to Preclude. (Dkt. No. 480.)

After consideration of Defendants' Objections (Dkt. No. 480), the Magistrate Judge's Order (Dkt. No. 446), and the underlying briefing (Dkt. Nos. 300, 334, 357, 399), the undersigned agrees with the reasoning provided within the Magistrate Judge's Order. Defendants' Objections are therefore **OVERRULED**, and the Magistrate Judge's Order is **ADOPTED**.

3. Objections to the Magistrate Judge's Report and Recommendation on Defendants' Motion for Summary Judgment that the Asserted Claims of U.S. Patent Nos. 9,320,018 and 9,681,466 are Patent Ineligible

Defendants previously filed a Motion for Summary Judgment that the Asserted Claims of U.S. Patent Nos. 9,320,018 and 9,681,466 are Patent Ineligible. (Dkt. No. 303.) Magistrate Judge Payne issued a Report and Recommendation (Dkt. No. 455), which recommended that the undersigned deny Defendants' Motion (Dkt. No. 303) in full. Now before the Court are Defendants' Objections to the Magistrate Judge's Report and Recommendation. (Dkt. No. 498.)

After consideration of Defendants' Objections (Dkt. No. 498), the Magistrate Judge's Report and Recommendation (Dkt. No. 455), and the underlying briefing (Dkt. Nos. 303, 345, 381, 406), the undersigned agrees with the reasoning provided within the Magistrate Judge's Report and Recommendation. Defendants' Objections are therefore **OVERRULED**, and the Magistrate Judge's Order is **ADOPTED**.

4. Objections to the Report and Recommendation Denying in Part Defendant's Motion for Partial Summary Judgment that Certain Disputed References are Prior Art

Defendants previously filed a Motion for Partial Summary Judgment that Certain Disputed References are Prior Art. (Dkt. No. 305.) This Motion sought summary judgment with respect to five references—the Yang, Hwang, Liebetreu, CATT, and LG references. (*Id.*) Magistrate Judge Payne issued a Report and Recommendation (Dkt. No. 457), which recommended that Defendants' Motion be granted in part. The Magistrate Judge recommended that summary judgment be granted for the Yang reference as the Plaintiff indicated that it would not contest the public accessibility of that reference. (Dkt. No. 457 at 3 (citing Dkt. No. 343 at 2).) However, the Magistrate Judge recommended that summary judgment be denied for the Hwang, Liebetreu, CATT, and LG references. (Dkt. No. 457 at 6.) Defendants have now filed Objections to the Magistrate Judge's Report and Recommendation, contending that the summary judgment was appropriate for the Hwang, Liebetreu, CATT, and LG references. (Dkt. No. 501.)

a. Yang Reference

No party has objected to the Magistrate's Judge's Recommendation that summary judgment be granted for the Yang reference. For this reason and the reasons set forth in the Report and Recommendation, the Recommendation is **ADOPTED**. Consequently, it is **ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED** with respect to the Yang reference and that the Yang reference is therefore prior art.

b. Hwang and Liebetreu References

Defendants object to the Magistrate Judge's Recommendation that summary judgment be denied for the Hwang and Liebetreu references. Defendants argue that the Schwartz declaration indicates that Hwang was labeled as "A New Frame Structure for Scalable OFDMA Systems (Inseok Hwang, Jaehee Cho, Sanghoon, Sung Hun Huh, Soon Young Yoon, Panyuh Joo, Jaeweon Cho, 04/03/11 [March 11, 2004])" and Liebetreu was labeled as "OFDMA PHY Enhancements for better mobility performance (John Liebetreu, et al., 04/03/18)." However, even with these labels, questions of fact remain as to whether a person interested and ordinarily skilled in the subject matter or art could identify the documents from the 4,000 to 10,000 listed references exercising reasonable diligence. These references were listed in primarily chronological order, and it remains unclear whether the website had any way to sort through the references. (Dkt. No. 343-3 at 67:11–68:6.) Because interested persons may have been required to look through a list containing somewhere between 4,000 and 10,000 references to find these references, the Court agrees with the Report and Recommendation that factual questions remain and that summary judgment should be denied for these references. The Magistrate Judge's Recommendation is therefore **ADOPTED**. Consequently, it is **ORDERED** that Defendants' Motion for Summary Judgment is **DENIED** with respect to the Hwang and Liebetreu references.


c. CATT and LG References

After consideration of Defendants' Objections (Dkt. No. 501), the Magistrate Judge's Report and Recommendation (Dkt. No. 457), and the underlying briefing (Dkt. Nos. 305, 343, 376, 407), the undersigned agrees with the reasoning provided within the

Magistrate Judge's Report and Recommendation for the CATT and LG References. Defendants' Objections to the Recommendations regarding the CATT and LG References are therefore **OVERRULED**, and the Magistrate Judge's Order is **ADOPTED**.

So Ordered this

May 6, 2019



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE